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9 Selvin Ramirez Batres

10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF KERN
13

14 SELVIN RAMIREZ BATRES, on behalf of
15 himself and all aggrieved employees,

16 Plaintiff,

17 v.

18 LEE MECHANICAL CONTRACTORS, INC.,
19 and DOES 1 to 100,

20 Defendants.

) NO. BCV-23-102686

)
) DECLARATION OF ADAM ROSE IN
) SUPPORT OF STIPULATION TO
) APPROVE PAGA SETTLEMENT

21 I, Adam Rose, declare the following:

22 1. I am one of the attorneys representing the plaintiff. I have personal knowledge of the facts
23 in this declaration and if called on to testify about the facts I would competently do so.

24 2. Attached is a true and correct copy of the PAGA settlement agreement.

25 3. Also attached is a true and correct copy of the proposed notice to the aggrieved employees
26 that will accompany the payments.

27 4. I uploaded this declaration containing the settlement agreement to the LWDA website at the
28 same time as filing the stipulation to approve the PAGA settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct.

1 Date: February 29, 2024

Adam Rose

Adam Rose

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PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Selvin Ramirez Batres ("Plaintiff"), individually and as the authorized proxy for the State of California and the Labor and Workforce Development Agency, and Defendant Lee Mechanical Contractors, Inc. ("Lee"). The Agreement refers to Plaintiff and Lee collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Lee, initiated on August 15, 2023 and pending in Kern County Superior Court, case number BCV-23-102686.

1.2. "Aggrieved Employee" means any non-exempt employee of Lee who worked at least one shift in California from May 30, 2022 to the date this settlement agreement is fully executed.

1.3. "Court" means the Superior Court of California, County of Kern.

1.4. "Defense Counsel" means Fisher & Phillips LLP.

1.5. "Effective Date" means the date when the Court enters a Judgment on its Order Approving the PAGA Settlement.

1.6. "PAGA Settlement Amount" means \$10,000, which is the total and maximum amount Lee agrees to pay under the PAGA Settlement. The PAGA Settlement Amount will be used to pay individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.

1.7. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled under Labor Code section 2699, subd. (i).

1.8. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.9. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.10. "PAGA Counsel" means Frontier Law Center.

1.11. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.12. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.13. "PAGA Letter" means Plaintiff's letter to Lee and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.14. "PAGA Notice" means the Notice of PAGA Payment. 1.15. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the PAGA Settlement Amount.

1.15. "Plaintiff" means Selvin Ramirez Batres, the named plaintiff in the Action.

1.16. "Approval Order" means the signed Court Order approving the Settlement and entering Judgment.

1.17. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.18. "Released Parties" means: Lee and each of its former and present parents, subsidiaries, affiliates, customers, employees, agents, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

1.19. "Settlement" or "PAGA Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. On August 15, 2023, Plaintiff commenced this Action. Lee denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Lee and the LWDA by sending the PAGA Letter.

2.3. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Lee promises to pay \$10,000 and no more as the PAGA Settlement Amount. Lee has no obligation to pay the PAGA Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. Lee will self-administer the settlement. None of the Gross Settlement Amount will revert to Lee.

3.2. Payments from the PAGA Settlement Amount. The following deductions will be made from the PAGA Settlement Amount:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.3%, which equals \$3,333.33 and PAGA Counsel Litigation Expenses Payment of \$350.00.

3.2.2. To the LWDA and Aggrieved Employees: The Net Settlement Amount is \$6,316.67 to be paid from the PAGA Settlement Amount, with 75% (\$4,737.50) allocated to the LWDA PAGA Payment and 25% (\$1,579.17) allocated to Individual PAGA Payments.

3.2.3.1. Lee will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,579.17) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. Lee will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Lee estimates there are 14 Aggrieved Employees who worked a total 143 of PAGA Pay Periods.

4.2. Payments from the Gross Settlement Amount. Within thirty (30) calendar days after the Effective Date, Lee will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, and the PAGA Counsel Expenses and Fees Payment.

5. RELEASES OF CLAIMS. Effective on the date when Lee mails all Individual PAGA Payments, the LWDA PAGA Payment, and the PAGA Counsel Expenses and Fees Payment, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,

representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to, claims under PAGA arising under Labor Code sections 1194, 1197, 1197.1, 2699, 510, 558, 512, 226.7, 226, and 226.3 ("Plaintiff's Release"). Plaintiff's Release does not extend to the separately negotiated individual settlement agreement regarding the non-PAGA claims, for which the Parties will execute a separate settlement agreement.

5.2 Release by Aggrieved Employees:

For and in consideration of the mutual promises and consideration set forth in this Agreement, all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint or the PAGA Letter, including, but not limited to, claims under PAGA arising under Labor Code sections 1194, 1197, 1197.1, 2699, 510, 558, 512, 226.7, 226, and 226.3 (collectively, the "Released PAGA Claims"). The Released PAGA Claims are expressly limited to claims for PAGA penalties and not any underlying predicate claims or causes of action.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. PAGA Counsel shall prepare and file an application for approval of this Settlement. PAGA Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)).

6.1 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than fifteen (15) calendar days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.

6.2 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

8.0 CONFIDENTIALITY. Plaintiff agrees to maintain the terms and conditions of this Agreement as confidential and agrees not to disclose the terms of this Agreement until the motion for approval is filed with the Court and/or submitted to the LWDA, after which time Plaintiff shall refer any questions or comments about the Settlement or this Agreement from alleged Aggrieved Employees to PAGA Counsel. The Parties agree that this paragraph is a material inducement to entering into this Agreement. Nothing in this Agreement shall limit Plaintiff's right to

communicate with his spouse(s), legal counsel retained by Plaintiff, personal certified accountant, financial adviser, or tax consultant, or as required or compelled by legal authority before or after the motion for approval is filed with the Court.

8.1. PAGA Counsel shall not publicize the Settlement on their website or in advertising/marketing materials, other than filing documents with the Court in connection with seeking approval of the Agreement. After the Approval Order has been entered by the Court, Plaintiff and PAGA Counsel may: (1) as required by law, (2) as required under the terms of the Agreement, or (3) as required under Plaintiff's Counsel's duties and responsibilities as counsel for the PAGA Settlement Members, comment regarding the specific terms of the Agreement. In all other cases, Plaintiff agrees to limit his statements regarding the terms of the Agreement, whether oral, written, or electronic, to say the Action has been resolved and that Plaintiff is satisfied with the terms of the Agreement. Nothing in this paragraph is intended to interfere with PAGA's Counsel's duties and obligations to faithfully discharge their duties as counsel for the purported Aggrieved Employees, including but not limited to, communicating with purported Aggrieved Employees regarding the Agreement, and nothing shall prohibit PAGA Counsel from referring to the Settlement in adequacy of counsel declarations or related court filings in this or other actions. If PAGA Counsel receives inquiries from the media regarding the settlement, they may state only that the Action has been resolved on the terms set forth in the Settlement that was publicly filed. Notwithstanding the foregoing, PAGA Counsel may note the fact of this Settlement, including as to amount of purportedly Aggrieved Employees, on their respective websites and in filings with courts in support of their appointment as PAGA counsel in other matters.

9. ADDITIONAL PROVISIONS.

9.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Lee that any of the allegations in the Operative Complaint have merit or that Lee has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Lee's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Lee reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Lee's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Lee, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

9.4 Cooperation. All Parties will cooperate in good faith and apply their best efforts to implement this Settlement, by, among other things, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement, submitting supplemental evidence and/or supplemental points and authorities if requested by the Court, or making changes to the Settlement if requested by the Court that do not materially affect the essential settlement terms. 8.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

9.5 No Tax Advice. Neither Plaintiff, PAGA Counsel, Lee nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

9.6 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

9.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

9.8 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

9.9 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.10 Knowing and Voluntary Agreement. Each Party has carefully read, and knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from his or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

9.11 Joint Drafting. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

9.12 Enforcement Actions. In the event that one or more of the Parties institute any legal action, motion, petition, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred. Therefore, Code of Civil Procedure section 664.6 applies.

1/18/2024

DocuSigned by:

Selvin RB
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_____ For Plaintiff Selvin Ramirez Batres

[Signature]

1/22/24

_____ For Defendant Lee Mechanical Contractors, Inc.

DocuSigned by:

Adam M. Rose, Esq.
D2C7FC7ADE79459...

_____ Counsel For Plaintiff Selvin Ramirez Batres

[Signature]

1/22/24

_____ Counsel For Defendant Lee Mechanical Contractors, Inc.

**NOTICE OF PAGA SETTLEMENT AND RELEASE OF
CLAIMS**

***Selvin Ramirez Batres v. Lee Mechanical Contractors, Inc.
Kern County Superior Court, Case No. BCV-23-102686***

*You are **not** being sued. This is **not** an advertisement. This notice affects your rights.*

YOU ARE RECEIVING A SETTLEMENT PAYMENT.

PLEASE READ THIS NOTICE CAREFULLY.

I. NOTICE OF PAGA SETTLEMENT

On [DATE], the Honorable Thomas S. Clark of Dept. 17 of the Superior Court of California for the County of Kern granted approval of the Settlement and ordered that all Aggrieved Employees (also known as PAGA Settlement Members) be notified of the Settlement and mailed their share of the Settlement.

You are receiving this Notice because you are a PAGA Settlement Member who is to be paid under the Settlement.

In this lawsuit, Plaintiff claims that Lee Mechanical Contractors, Inc. (“Defendant”) failed to comply with the requirements of the California Labor Code relating to payment of all minimum and overtime wages due, provision of meal and rest periods, provision of accurate wage stubs and timely payment of wages. Plaintiff solely sought civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other Aggrieved Employees under the Private Attorneys General Act (“PAGA”) arising out of these alleged violations.

The Aggrieved Employees (otherwise referred to herein as PAGA Settlement Members) are all non-exempt employees of Defendant who worked at least one shift in California from May 30, 2022 through January 22, 2024.

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim.

Defendant maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENTS

By law, under the Private Attorney Generals Act, the amount recovered in settlement, after paying for attorney’s fees and costs, and costs of administration of settlement, are to be split between the State of California and the PAGA Settlement Members. The State receives 75% of the net settlement amount and the PAGA Settlement Members receive 25% of the net settlement (to be allocated on a pro rata basis).

Each PAGA Settlement Member will receive a pro rata share of the PAGA Settlement Members Payment based on their Eligible Pay Periods relative to the total Eligible Pay Periods of all PAGA Settlement Members (“Individual PAGA Settlement Member Payment”).

You worked «MERGED PayPeriods» pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is [fixedvalue TotalPP]. Therefore, your Individual PAGA Settlement Member Payment is \$«CheckAmount».

III. RELEASE

The Court has approved the Parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, the Named Plaintiff and the State of California will release the Released Parties from any and all claims under the PAGA which arose during the PAGA Period and (i) were asserted in the LWDA Letter and Plaintiffs’ Complaint; and/or (ii) reasonably could have been asserted in the Action based upon the facts alleged in the

LWDA Letter and Plaintiffs' Complaint ("PAGA Released Claims"), including but not limited to claims for civil penalties under PAGA arising out of predicate violations of Labor Code §§ 1194, 1197, 1197.1, 2699, 510, 226, 226.3, 226.7, 512 and 558 during the period from May 30, 2022 through January 22, 2024. This Release does not release any Aggrieved Employee's claims for wages or damages.

"Released Parties" shall mean Defendant and each of its former and present parents, subsidiaries, affiliates, customers, employees, agents, directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors and assigns.

Upon entry of the Order approving the Settlement, Aggrieved Employee covered by this Agreement will be unable to seek civil penalties under PAGA for the release claims above.

This Release does not serve to bar, prevent, or otherwise affect the ability of an Aggrieved Employee to bring individual, non-representative claims against Defendants for alleged violations of the Labor Code.

IV. ADDITIONAL INFORMATION

This Notice is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Superior Court of California for the County of Kern, during regular business hours of each court day.

All questions by PAGA Settlement Members regarding this Notice of PAGA Settlement and/or the Settlement should be directed to Defendant's Counsel.

The attorneys for Defendant are:

Talar Tavlian
FISHER & PHILLIPS
(213) 330-4500
444 S. Flower St., #1500
Los Angeles, CA 90071

You may call Defendant's Counsel with any questions. You must inform Defendant's Counsel of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, Defendant shall direct all unclaimed funds to the California Department of Industrial Relations Unpaid Wage Fund in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact Plaintiff immediately to request a replacement.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH QUESTIONS.**